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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7553 OF 2000

Kirloskar Mahle Filter Systems Ltd.,
Pune. ... Petitioners

V/s

1. Shri Chandrakant Tukaram Ubhe;
& others. ... Respondents

Mr. C.U.Singh with Mr. Niranjan Mogre i/by M/s. Haresh Mehta & Co. for the petitioners.

Mr. M.S.Karnik for respondent Nos. 1 to 8.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 12TH SEPT., 2007.

ORAL JUDGMENT:

1. This petition challenges the order of the Industrial Court in Complaint (ULP) No. 800 of 1997. This complaint was filed under Items 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Industrial Court has concluded that the petitioners have committed unfair labour practices under the aforesaid items and has directed them to extend the benefits of permanency to the respondents herein, from the date they completed 240 days in service. The Industrial Court has also directed the petitioners to absorb the complainants

- the respondents herein, as permanent employees.

2. The main contention raised by the learned counsel appearing for the petitioners is that the Industrial Court had no jurisdiction to entertain the complaint in view of the fact that there was no employer employee relationship between the respondent Company and the workmen themselves. He submits that, in view of the judgments in **Cipla Ltd. v/s Maharashtra General Kamgar Union & ors., reported in AIR 2001 SC 1165 and Vividh Kamgar Sabha v/s Kalyani Steels Ltd., reported in 2001 I CLR 532 (SC),** the Industrial Court ought to have first considered whether on the basis of the pleadings and material on record the respondents had established indisputably that there was an employer and employee relationship between themselves and the workman. Not having done so, according to the learned counsel, would mean, the order of the Industrial is inoperative and bad in law. He submits that the Industrial Court ought not to have considered the merits of the dispute without recording a finding whether an employer and employee relationship exists.

3. With the assistance of the learned counsel for the parties, I have perused the complaint which is annexed to the petition. The pleadings in the complaint

indicate that the respondents have contended that they are the workmen of the petitioner Company, however, their names have been incorrectly shown in the muster roll of the respondent No.9 i.e. the contractor; that the respondent Nos. 1 to 8 were appointed sometime in the year 1986-1987 as watchmen in the security department of the Company; that they had incorrectly been shown on the muster roll of the respondent No.9.

4. The petitioners filed their written statement controverting the averments in the complaint. It was stated that the respondent workmen were not employed by them at any point of time and were in fact employees of their contractor i.e. the respondent No.9 herein. It is pleaded that the Company engaged contractors for security work and the contract with respondent No.9 was first entered into between themselves and the respondent No.9 on 18.6.1989 and by a letter written on 22.5.1990. Thus when the complaint was filed on 4.11.1997, admittedly, the workmen were engaged through the contractor. There is no pleading or material to establish that the employer and employee relation exists between the petitioners and the respondent workmen. In these circumstances, the impugned order of the Industrial Court is required to be set aside.

5. The Supreme Court in the case of **Cipla Ltd. (supra),** has observed that there must be an indisputable relationship of employer and employee between the workmen and the employer. It is only in the event that the relationship has been in existence which has been sought to be controverted much later that the complaint is maintainable and the question of employer and employee relationship can be tried as an incidental issue under Section 32 of the MRTU & PULP Act. In my view, since the pleadings do not indicate any relationship of employer and employee between the petitioners and the respondent workmen, the complaint could not have been entertained and was liable to be dismissed.

6. Rule made absolute. Petition allowed.

7. No order as to costs.

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